

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LABOUR REVISION NO. 47 OF 2020

(Original CMA/MZ/BUCH/127/2019)

**LAKE VICTORIA CHRISTIAN PRE &
PRIMARY ENGLISH MEDIUM SCHOOL APPLICANT**

VERSUS

SEBASTINA MALINDIMA KASAMWA..... RESPONDENT

EXPARTE RULING

18th Febr. & 16th March, 2021

RUMANYIKA, J.:

The application is for revision, with respect to award and orders of 22/04/2021 of the Commission for Mediation and Arbitration for Mwanza (the CMA). It is brought under Rules 24(1)(2)(a)–(f)(3)(a)–(d) and 28(1)(c)(d) of the Labour Court Rules, 2007 GN 106/2007 and Sections 91 (1)(a) and (b)(2)(c) and 94(b)(i) of the Employment and Labour Relations Act No.06 of 2004 and it is supported by affidavit of Restituta M. Punguja whose contents essentially, Mr. Amri Linus learned counsel for Lake Victoria Christian Pre & Primary English Medium School (the applicant) adopted during the hearing.

When the application was called on 18/02/2021 for hearing, though duly served Sebastian Malindima Kasamwa (the respondent) did not appear it is for this reason that by order of this court his appearance was dispensed with hence the exparte ruling.

Mr. A. Linus learned counsel submitted; **(1)** that in fact there shouldn't have been issue of unfair termination because the parties had one year fixed term of contract upon expiry the parties were done since (case of **Ezekiel Samwel Ndehaki V. Tanzanite One Mining Ltd**, Labour Revision No. 59 of 2013, HC Dar es Salaam **(2)** that on different occasions the respondent had confessed misconduct of being in possession of unauthorized school documents and for that reason he resigned in writing (case of **Nixon Alex V. Plan International**, Labour Revision No. 22 of 2014 HC Mwanza. Counsel having had abandoned ground number 5 **(3)** that the respondent had been paid over and above and he claimed no salary arrears. That is all.

Questioned by the court for clarity, the learned counsel submitted that the term of contract ran from 01/01/2014 to 31/12/2014 then the respondent was terminated/he resigned on 15/09/2016 after all no set of the rules alleged breached was produced in the CMA.

The issue is whether the respondent was unfairly terminated much as, with regard to the long established legal principle. I agree with Mr. A. Linus learned counsel that once it was established and by evidence proved that between the parties' fixed term of contract of employment had lapsed, therefore were done, the issue of unfair termination was neither here nor there (case of **Ezekiel Samwel** (supra)).

The evidence on record reads as follows;

The respondent stated that as the school began 2009, and he was recruited by the applicant on 06/04/2014, on a fixed term at a monthly wage of shs. 250,000/= but was paid shs. 100,000/= less, he complained but in vain until when he was terminated on 13/06/2016. As it now stood he claimed a total of shs. 2,400,000/= being gratuity, salary arrears and salary in lieu of notice. That is all.

Sm1 Restituta M. Punguja stated that the respondent was employed on 14/03/2015 as teacher but he became a habitual drunkard, violent to work mates, investigator and he stole some school documents, having been warned three times he resigned.

Sm2 Henry Magesa stated that the school belonged to the church to which was chair on probationary terms 2014-2015 the applicant having employed the respondent but therein between it transpired that the respondent had no academic credentials although having had some exemplary performance he raised to a position of academic master until the year 2016 when even at the work place he became drunkard, whenever the salaries delayed he instigated strikes/boycott and he stole various employer's documents then on that basis he was terminated on 17/06/2016.

Sm3 Harid Manase resident of Sengerema district and secretary to the church he stated that actually the respondent wasn't engaged in 2014 because by that time the school wasn't in existence that if anything, the latter only served as volunteer but until he became he ran wild in 2016.

At least whether or not, with effect from 2014 or 2015, but the parties having had agreed that the contract of employment was that of fixed term of one year, whether or it was, for whatever reason terminated on 13/06/2016 or 17/06/2016 it was immaterial much as upon expiry of the first year a formal renewal was uncalled for silence therefore it constituted automatic renewal like Mr. A. Linus learned counsel precisely so

in my considered view submitted that the issue of unfair termination it should not even have been raised under the circumstances much as considering the evidence available at no given point in time the parties had it in mind it being express or implied that the contract was permanent and pensionable. After all upon being terminated and paid, and, he is on record having had asked for shs. 1.0 million being full payment, the respondent did not sufficiently show that end of the day he was less paid terminal benefits.

In the upshot the CMA's award and orders are quashed and set aside respectively. The meritorious application is granted. It is so ordered.

Right of revision is explained.

S. M. RUMANYIKA
JUDGE
03/03/2021

The ruling delivered under my hand and seal of the court in chambers this 16/03/2021 in the absence of the parties.



S. M. RUMANYIKA
JUDGE
16/03/2021